

# Voting in Primary Elections: State Rules On Participation

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### **ABSTRACT**

This report summarizes state rules (including the District of Columbia) on voter participation in primary elections. The summaries indicate whether a state has an open or closed primary; they also include information on voting eligibility for independent voters in primary elections. This report will be updated for the 2002 election cycle.

## Summary

This report summarizes information for the states and the District of Columbia concerning voting participation in primary elections. Procedures vary from state to state concerning who is eligible to vote in primary elections, depending on whether the state has an open primary (a voter has the option of choosing either party ballot in the secrecy of the polling booth) or a closed primary (a voter must register with a political party before the election to be eligible to vote or must publicly choose a party ballot at the polling place). At present, 12 states have open primaries and 38 states and the District of Columbia have closed primaries. In a June 26, 2000 decision, the U.S. Supreme Court ruled that the open primary system used California, often called a blanket primary, was unconstitutional (see discussion in the introductory section below and individual state notes). The ruling affects similar primaries in Washington and Alaska, while it is unclear whether it applies to states with open primaries that are not blanket primaries.

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As with many aspects of the voting process, the rules concerning who is eligible to vote in party primary elections differ considerably from one state to another. Some states limit participation to registered party voters only, some permit any registered voter to cast a ballot in either party primary, and other states use a system that falls somewhere in between. In general, state primaries can be categorized as being either open or closed, depending on the specific rules that govern participation. Definitions of open and closed primaries vary in political science literature; the information presented here is based on the definition used by the Council of State Governments in its *Book of the States*, which classifies primaries according to the ballot choices available to a primary voter on election day. A primary election is called *open* if a voter is given the ballots for all parties, chooses one ballot in the voting booth, and discards the unused ballots.<sup>1</sup> In *closed* primary elections, a voter must formally register with a party before the election in order to vote in the party's primary or chooses one party ballot at the polls (sometimes referred to as a semi-open primary, because a voter can make the choice on election day). The comment section in Table 1 notes whether a public record of the choice is kept. According to this definition, 12 states have open primaries and 38 states and the District of Columbia have closed primaries.

The primary system used in California, a variant of the open primary referred to as a blanket or jungle primary, was recently determined to be unconstitutional by the U.S. Supreme Court. In a June 26, 2000 ruling on the case, *California Democratic Party v. Jones* [530 U.S.— (2000)], the court determined that a party's First Amendment right of association is violated by the blanket primary system, which was instituted in California when voters approved it as a ballot initiative in 1996. In blanket primaries, voters receive a ballot that lists all candidates running for election to each office regardless of their party affiliation. The leading candidates from the Democratic, Republican, and other qualified parties are nominated, and their names are certified for the general election ballot. As noted previously, in the standard open primary, a voter is given the ballots for each party and may choose only one ballot in the voting booth. Alaska and Washington also use a blanket primary system to choose party nominees; these states and California will need to devise a new primary system for the 2002 election cycle.

Louisiana's open primary system is unlike that used in any other state. All candidates compete in the primary election, regardless of party affiliation. If a candidate receives a majority of the primary vote, he or she is declared elected, and no general election is held. If no candidate wins a majority, however, the two candidates who received the most voters are listed on the ballot in November. On occasion, the two candidates with the highest vote totals in the primary are from the same political party, and both names appear on the general election ballot. The Louisiana primary system is not affected by the U.S. Supreme Court ruling in *California Democratic Party v. Jones* because it is a nonpartisan primary in which voters select candidates for the general election rather than party nominees.

Closed primaries can be divided into three categories: (1) those that register voters by party and limit primary voting to registered party members (independent voters forfeit the opportunity to participate in the primary); (2) those that register voters by party but allow them to choose the other party's ballot on primary day (independents may participate in primaries); and (3) those that do not have party registration but require voters to ask for one party's ballot at the polls on primary election day. The last two categories are sometimes called "semi-open" primaries because the voter must make a public choice of ballot, which may be recorded. In some cases, the record is available to the parties and a voter might even be challenged and required to pledge to

<sup>1</sup> According to L. Sandy Maisel, *Political Parties & Elections in the United States: An Encyclopedia*, (New York: Garland Publishing, Inc., 1991), p. 715, an open primary is defined as follows: "A primary election in which voters may decide at the time of the election and in the privacy of the voting booth which party primary they wish to participate in is called an open primary. Voters need not express allegiance to any party before the primary election."

support party candidates in the general election, a requirement widely considered unenforceable in any event.

The following table provides information on whether a state holds an open or closed primary, deadlines for declaring or changing party affiliation before a primary, and rules for participation by unaffiliated voters. It also indicates instances where the rules for participating in a presidential primary differ from those that apply to the regular state primary election. The comments section in the table explains specific differences in how each state administers its open or closed primary.

**Table 1. Party Affiliation and Primary Voting**

State	Party registration	Party affiliation for voting		Primary type		Comment
		Days before election voter can change/declare affiliation	Voter selects party on election day	Open	Closed	
Alabama	N	—	•	—	•	Voters select one party ballot and sign a poll list that notes the choice; parties have access to that list.
Alaska	N	—	—	•	—	<i>Blanket primary.</i> Voters receive a ballot that lists all party candidates, and may cast their vote for any candidate for each office, regardless of the candidate's party affiliation. <b>A U.S. Supreme Court ruling in <i>California Democratic Party v. Jones</i> (June 26, 2000) found that the system violates a party's First Amendment right of association; the state must revise the primary system accordingly by 2002.</b>
Arizona	Y	29	—	—	•	Voters receive the ballot for the party with which they are registered; independent voters may choose either party ballot, which registers them with that party.
Arkansas	N	—	•	—	•	Voters select one party ballot at the polls; the choice of ballot is recorded and parties have access to that list. In a runoff primary, voters must vote the same party ballot as in the first primary.
California	Y	29	—	•	—	<i>Blanket primary.</i> Voters receive a ballot that lists all party candidates, and may cast their vote for any candidate for each office regardless of the candidate's party affiliation (in the Presidential primary, Democratic and Republican voters receive color-coded ballots; only ballots from party voters are counted for purposes of delegate selection). <b>A U.S. Supreme Court ruling in <i>California Democratic Party v. Jones</i> (July 2000) found that the system violates a party's First Amendment right of association; the state must revise the primary system accordingly by 2002.</b>
Colorado	Y	29	—	—	•	Major party primary, no minor parties are listed on the ballot. Unaffiliated voters may declare party affiliation at the polls, which enrolls them with that party.

State	Party registration	Party affiliation for voting		Primary type		Comment
		Days before election voter can change/declare affiliation	Voter selects party on election day	Open	Closed	
Connecticut	Y	3 mos.	—	—	•	Voters receive the ballot for the party with which they are registered. At present, unaffiliated voters may not vote in the primary, but the parties can permit participation by unaffiliated voters by adopting a party rule to that effect.
Delaware	Y	By March 1 of election year	—	—	•	Voters receive the ballot for the party with which they are registered. To change party registration for the presidential primary, a voter must complete the change by Sept. 1 of the preceding year; the cutoff date for changing party registration in a presidential year must be at least 30 days after the presidential primary.
Dist. of Col.	Y	30	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters may not vote in the primary.
Florida	Y	30	—	—	•	Voters receive the ballot for the party with which they are registered. If all the candidates in a primary are from the same party, all voters, including those who are unaffiliated, may participate in the election.
Georgia	N	—	•	—	•	Voters choose one party ballot at the polls (they must vote the same party ballot if there is a runoff primary); the choice is recorded and parties have access to that list.
Hawaii	N	—	•	•	—	All voters receive ballots for each political party before entering the voting booth, but may only vote for candidates in one party; there is no presidential primary.
Idaho	N	—	•	•	—	All voters receive ballots for each political party before entering the voting booth, but may only vote for candidates in one party (the rules for participation are the same in the presidential primary; the results of the Democratic party on not binding on the selection of delegates).
Illinois	N	—	•	—	•	Voters choose one party ballot at the polls; the choice is recorded and parties have access to that list.
Indiana	N	—	•	—	•	Voters choose one party ballot at the polls; the choice is recorded and parties have access to that list.

State	Party registration	Party affiliation for voting		Primary type		Comment
		Days before election voter can change/declare affiliation	Voter selects party on election day	Open	Closed	
Iowa	Y	—	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters may change their registration to Democratic or Republican at the polls in order to participate. Democrats and Republicans may change their registration at the polls.
Kansas	Y	20	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters select one party ballot at the polls and the choice automatically registers them with that party.
Kentucky	Y	Dec. 31 <sup>st</sup> of the year preceding the election year	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters are not eligible to participate.
Louisiana	Y	24	—	•	—	<i>Blanket primary.</i> Voters receive a ballot that lists all party candidates and may cast their vote for any candidate for each office regardless of the candidate's party affiliation. In a presidential primary, voters receive the ballot for the party with which they are registered; unaffiliated voters are not eligible to participate.
Maine	Y	90	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters are not eligible to participate.
Maryland	Y	12 weeks	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters may vote in the Republican primary in 2000 (either party can permit participation by unaffiliated voters in any future primary by requesting such a change with the state Board of Elections).
Massachusetts	Y	20	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters can choose either party ballot (in the presidential primary, the choice enrolls them with that party but a voter can re-enroll as unaffiliated before leaving the polling place).
Michigan	N	—	•	•	—	All voters receive one ballot that lists all candidates for each party; voters mark their ballot for one party only (the rules for participation are the same in the presidential primary, which is non-binding for the Democrats).

State	Party registration	Party affiliation for voting		Primary type		Comment
		Days before election voter can change/declare affiliation	Voter selects party on election day	Open	Closed	
Minnesota	N	—	•	•	—	All voters receive one ballot that lists all candidates for each party; voters mark their ballot for one party only.
Mississippi	N	—	•	—	•	Voters choose one party ballot at the polls. No public record is kept of a voter's choice of ballot (the rules for participation are the same in the presidential primary).
Missouri	N	—	•	•	—	All voters receive one ballot which lists all candidates for each party; voters mark their ballot for one party only. No public record is kept of a voter's choice of ballot.
Montana	N	—	•	•	—	All voters receive ballots for each political party before entering the voting booth but may only vote for candidates in one party (the rules for participation are the same in the Presidential primary).
Nebraska	Y	By 2 <sup>nd</sup> Friday before the election if voting in person; by 3 <sup>rd</sup> Friday before the election if re-registering by mail.	—	—	•	Voters receive the ballot for the party with which they are registered; the parties have the option to permit unaffiliated voters to participate in their party primary (the rules for participation are the same in the presidential primary).
Nevada	Y	30	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters are not eligible to participate.
New Hampshire	Y	10	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters can choose either party ballot—the choice enrolls them with that party but a voter can enroll again as unaffiliated before they leave the polling place (the rules for participation are the same in the presidential primary).
New Jersey	Y	50	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters are not eligible to participate. Newly registered voters declare party affiliation at the first primary election in which they participate, which registers them with the party whose ballot they choose.

State	Party registration	Party affiliation for voting		Primary type		Comment
		Days before election voter can change/declare affiliation	Voter selects party on election day	Open	Closed	
New Mexico	Y	28	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters are not eligible to participate.
New York	Y	1 year	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters are not eligible to participate.
North Carolina	Y	25	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters can choose either party ballot, and the choice is recorded (participants must vote the same party ballot if there is a runoff primary).
North Dakota	N	—	•	•	—	All voters receive one ballot that lists all candidates from each party, but may only vote for candidates in one party.
Ohio	N	—	•	—	•	Voters choose one party ballot at the polls; the choice is recorded and parties have access to that list.
Oklahoma	Y	no change between July 1 and Sept. 30 in election years	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters are not eligible to participate.
Oregon	Y	8 (to change affiliation); 21 (for new registrants).	—	—	•	Voters receive the ballot for the party with which they are registered; the parties have the option to permit unaffiliated voters to participate in their party primary.
Pennsylvania	Y	30	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters are not eligible to participate.
Rhode Island	Y	90	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters can choose either party ballot—the choice enrolls them with that party.
South Carolina	N	—	•	—	•	Voters choose one party ballot at the polls; the choice is recorded and parties have access to that list.
South Dakota	Y	15	—	—	•	Voters receive the ballot for the party with which they are registered.

State	Party registration	Party affiliation for voting		Primary type		Comment
		Days before election voter can change/declare affiliation	Voter selects party on election day	Open	Closed	
Tennessee	N	—	•	—	•	Voters choose one party ballot at the polls. No public record is kept of a voter's choice of ballot.
Texas	N	—	•	—	•	The Democratic and Republican parties conduct entirely separate primaries, sometimes in separate locations within the same precinct. Voters choose which primary to participate in, and the choice informally registers them with that party for the election year. If there is a runoff primary, voters must vote the same party as in the first primary; those who didn't vote in the first primary can choose either party in the runoff.
Utah	Y	10	—	—	•	Voters receive the ballot for the party with which they are registered; unaffiliated voters can choose either party ballot (no public record of their choice is kept).
Vermont	N	—	•	•	—	All voters receive ballots for each political party before entering the voting booth, but may only vote for candidates in one party. In the presidential primary, a voter must choose one party ballot before voting; a public record is kept of each voter's ballot choice.
Virginia	N	—	•	—	•	Voters choose one party ballot at the polls; the choice is recorded and parties have access to that list.
Washington	N	—	—	•	—	<i>Blanket primary.</i> Voters receive a ballot that lists all party candidates and may cast their vote for any candidate for each office regardless of the candidate's party affiliation. <b>A U.S. Supreme Court ruling in <i>California Democratic Party v. Jones</i> (July 2000) found that the system violates a party's First Amendment right of association; the state must revise the primary system accordingly by 2002.</b>
West Virginia	Y	30	—	—	•	Voters receive the ballot for the party with which they are registered; independent voters may vote in the Republican primary (participating does not automatically register such voters as Republicans).
Wisconsin	N	—	•	•	—	All voters receive ballots for each political party before entering the voting booth, but may only vote for candidates in one party.

State	Party registration	Party affiliation for voting		Primary type		Comment
		Days before election voter can change/declare affiliation	Voter selects party on election day	Open	Closed	
Wyoming	Y	—	—	—	•	Voters receive the ballot for the party with which they are registered; same-day registration permits any voter to declare or change party affiliation at the polls and reverse the change after voting.

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